

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

Sears Logistics Services, Inc.,

Plaintiff,

v.

Phoenix Warehouse,

Defendant.

Case No. 2:14-cv-999

Judge Watson

Magistrate Judge Kemp

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S MOTION TO STAY CASE SCHEDULE (DOC. 31)**

Plaintiff Sears Logistics Services Inc. (n/k/a Innovel Solutions, Inc.) ("Sears Logistics") opposes Defendant Phoenix Warehouse's request to stay the case schedule. Phoenix Warehouse asks the Court to stop the progress of this case because it anticipates filing a motion to consolidate this case with Case No. 2:15-cv-02834. In the newly-filed case, the deadline for the Defendants to respond to Plaintiff Phoenix Warehouse, LLC's complaint is November 17, 2015. Therefore, it could be more than a month before Phoenix Warehouse even could file a motion to consolidate, and then the parties would need to fully brief that issue. Consolidation is far from certain because the newly-filed case involves distinct legal and factual issues, even though it involves the same parties and lease at issue in this case.

Phoenix Warehouse provides no compelling reason for the Court to halt this case now. Discovery ended August 28, 2015, and both parties filed dispositive motions by the September 25, 2015 deadline. The parties' responsive memoranda are due this week, and reply memoranda will be due by the end of October. There is no reason to delay summary-judgment briefing now that the parties are fully engaged with the issues. This case has been pending for nearly fifteen

months, and the Court should be afforded the opportunity to decide the legal issues in this case expeditiously.

Consolidation of the cases may or may not be appropriate, and Sears Logistics will respond to Phoenix Warehouse's motion to consolidate when it is filed. But regardless of whether these cases ever are consolidated, it makes no sense to stop progress in this case. The Court should deny Phoenix Warehouse's motion to stay the case schedule.

Respectfully submitted,

s/ Gregory P. Mathews

Charles E. Ticknor, III (0042559)

Gregory P. Mathews (0078276)

DINSMORE & SHOHL, LLP

191 W. Nationwide Boulevard, Suite 300

Columbus, Ohio 43215

Phone: (614) 628-6880

Fax: (614) 628-6890

charles.ticknor@dinsmore.com

gregory.mathews@dinsmore.com

*Attorneys for Plaintiff Sears Logistics Services, Inc.*

*(n/k/a Innovent Solutions, Inc.)*

**CERTIFICATE OF SERVICE**

I certify that on October 13, 2015, I electronically filed the foregoing Motion for Summary Judgment with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to:

Edward G. Hubbard  
Lane, Alton & Horst LLC  
ehubbard@lanealton.com  
*Attorney for Defendant Phoenix Warehouse*

s/ Gregory P. Mathews  
An Attorney for Plaintiff